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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO. 83-6156

ROBERT CARLTON ENRIGHT, Appellant

-v-

THE STATE OF CALIFORNIA, Appellee

ON APPEAL FROM THE
COURT OF APPEAL FOR THE STATE OF CALIOFNRIA,
SECOND APPELLATE DISTRICT

JOHN P. KENOSIAN
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
7080 Hollywood Boulevard
Suite 307
Hollywood, California 90028
(213) 466-4525

Counsel for Appellant,
ROBERT CARLTON ENRIGHT

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NO._____

ROBERT CARLTON ENRIGHT, Appellant

-v-

THE STATE OF CALIFONRIA, Appellee

_____

ON APPEAL FROM THE COURT OF APPEAL, SECOND APPELLATE DISTRICT OF THE STATE OF CALIFORNIA

_____

JURISDICTIONAL STATEMENT

_____

ROBERT CARLTON ENRIGHT, the Appellant, appeals from the judgment of the Court of Appeal of the State of California, Second Appellate District dated September 28, 1983 holding that the trial court erred in granting the Appellant's motion to suppress evidence and further ruling that "it is settled that reasonable grounds to search a person or inspect his personal effects at an international port of entry is established solely by reason of entry into the United States from a foreign country."

QUESTION PRESENTED

Probable cause or at least a reasonable suspicion under 19 U.S.C. § 482 is required by customs officials to search a person or his personal belongings at an international border or its functional equivalent.

OPINION

The opinion of the Court of Appeal of the State of California, Second Appellate District division 1 which was "not to be published" appears in the appendix hereto as appendix "A".

/////

JURISDICTION

The judgment of the Court of Appeal of the State of California Second Appellate District was entered on September 28, 1983 reversing the Superior Court for the County of Los Angeles which had suppressed evidence and dismissed the case against Appellant on the basis that said search and seizure were illegal.

Thereafter, the Supreme Court of the State of California on November 23, 1983 denied a hearing in the instant case. The jurisdiction of this court is invoked under 28 U.S.C. § 1275 (1).

CONSTITUTIONAL PROVISIONS AND RULES

Fourth Amendment, United States Constitution:

> "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be voilated ***."

19 U.S.C. Code, § 482:

> " Any of the officers or persons authorized to board or search and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law ***."

RAISING THE FEDERAL QUESTION

From the inception of this case, Appellant has raised the application of the Fourth Amendment of the United States Constitution to Appellant's case and/or the application of 19 U.S.C. § 482 requiring at the very minimum, a "reasonable suspicion to suspect".

These constitutional issues were first raised in the Municipal Court of the Los Angeles Judicial District, County of Los Angeles on March 16, 1982. Thereafter, the constitutional question was again raised in the Superior Court for the County of Los Angeles resulting in the suppression of all evidence against Appellant and the dismissal of criminal charges against Appellant

on October 1, 1982. Appellant continued to raise the constitutional challenges and/or the applicability of 19 U.S.C. § 482 in the Court of Appeal, Second Appellant District which reversed the Los Angeles Superior Court on September 28, 1983 and thereafter in the Supreme Court of the State of California which court refused to grant Appellant a hearing on November 28, 1983.

STATEMENT OF THE CASE

On December 31, 1981 at approximately 8:30 a.m. Appellant, ROBERT CARLTON ENRIGHT and HENNING REIMER came through customs at the U.S. Customs Office, Los Angeles International Airport, on flight number 832 from Lima, Peru on Varrig Airlines.

There was nothing suspicious about either man; they did not act nervous nor give any reason to believe that they were doing anything illegal.

In the primary inspection line, their hand carried baggage was checked with negative results.

Because a computer check on the TECS Machine, [which is a United States Treasury Computer], showed both men's names on the computer, whey were separated from the other 50 or 60 passengers in primary and sent to a secondary inspection station approximately 100 yards away, out a door and down some stairs.

An "M" was marked at the top of their declarations meaning that there was information on the TECS on these particular persons.

At secondary, the two men's bags were further searched and in a photo album found in Appellant's bag, was a white powdery substance inside the front and back covers which tested positive for cocaine.

Of the approximately 6 people referred from primary to secondary on the date in question, only Appellant and REIMER came to secondary because of something that was on the computer.

The office of the District Attorney for the County of Los Angeles, State of California refused to reveal the source of the

TECS computer information and the Judge of the Superior Court for the County of Los Angeles suppressed the evidence and dismissed the case against Appellant and REIMER. The motion to suppress the evidence was granted because the computer information was insufficient to warrant the search of the luggage. It was stipulated there there was no search warrant obtained for the search.

QUESTION IS SUBSTANTIAL

The right of customs officers to search a person and his belongings for contraband at an international border or its functional equivalent without probable cause or at the very least a "reasonable suspicion to suspect" has never been treated before by this court other than in dicta.

Carroll v. United States

276 U.S. 132 (1924)

This high court in United States v. Ramsey, 431 U.S. 606 (1977) upheld 19 U.S.C. § 482 and implementing postal regulations authorizing customs officials to inspect incoming international mail when they have a "reasonable cause to suspect" that the mail contains illegally imported merchandise.

It is urged that Ramsey, supports Appellant's position that 19 U.S.C. § 482 also applies with equal force in this case.

In the case at hand there are two federal statutes which had their origin in 1866. The first statute, 19 U.S.C. § 482 requires officers or persons authorized to board or search and examine vehicles beasts, or persons to have "reasonble cause to suspect there is merchandise imported contrary to law" (Emphasis Supplied.)

The second statute, 19 U.S.C. § 1582, allows the Secretary the Treasury to prescribe regulations for the search of persons and baggage and authorizes employment of female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries are liable to

detention and search by authorized officers or agents of the government under such regulations. (Emphasis Supplied.)

Under 19 U.S.C. § 1582, two regulations were enacted which apply here:

19 C.F.R. § 162.6 Search of persons, baggage and merchandise.

> All persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection and search by a Customs officer. District directors and special agents in charge are authorized to cause inspections, examinations, and search to be made under section 467, Tariff Act of 1930, as amended (19 U.S.C. § 1467), of persons, baggage, or merchandise even though such persons, baggage, or merchandise were inspected, examined, searched or taken on board the vessel at another part or place in the United States or in the Virgin Islands, if such action is deemed necessary or appropriate.

19 C.F.R. § 162.7 Search of vehicles, persons, or beasts.

> A customs officer may stop, search and examine any vehicle, person, or beast, or search and trunk or envelope wherever found, in accordance with section 3061 of the Revised Statute (19 U.S.C. § 482). (Emphasis Supplied.)

It is more interesting to note that Section 162.7 specifically cites 19 U.S.C. 482 which requires "reasonable cause to suspect."

The legislative history of Section 19 U.S.C. § 482 and 19 U.S.C. § 1582 clearly teaches that these two sections must be read

and considered together.

Border searches have long been recognized as an exception to the Fourth Amendment requirement that searches be based on probable cause. Boyd v. United States, 116 U.S. 616 (1886). The exception is based on two historical events: the passage of an Act to regulate the Collection of Duties, 1 STAT 29, by the first congress and the proposal of the Fourth Amendment, 1 STAT 97, two months later by the same congress. United States v. Ramsey 431 U.S. 606, (1977). In Boyd, United States 116 U.S. 616 (1886) the court states the following:

> "The first statute passed by congress to regulate the collection of duties, the act of July 31, 1789, (1 St. 43,)... As this act was passed by the same congress which proposed for adoption the original amendments to the constitution, it is clear that the members of that body did not regard searches and seizures of this kind as "unreasonable" and they are not embraced within the prohibition of the amendment".

The original customs act contained forty sections. Section 23 of this Act provided in pertinent part:

> "(I)t shall be lawful for this collector, or other officer of the customs, after entry made of any goods, wares, or merchandise, or suspicion of fraud, to open and examine, in the presence of two or more reputable merchants, any package or packages thereof..."

Section 24 provided in pertinent part:

> "(E)very collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have

full power and authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares, or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise; and if they shall have cause to suspect a concealment thereof, in any particular dwelling-house, store, building or other place, they or either of them shall, upon application of oath or affirmation to any justice of the peace be entitled to a warrant to enter such house, store, or other place (in the date time only) and thereto search for such goods, and if any shall be found to seize and secure same for trial..."a STAT 29, 43. (Emphasis Supplied.).

The Act was amended the following year by the second session of the same congress, Act of August 4, 1790, chap. 35, sec. 73, 1 STAT. 145 in response to an address to congress by then Secretary of the Treasury, Alexander Hamilton. See, "Operations of the Act Laying Duties on Imports", State Papers, Finance, Vol. I, 45-50, April 22, 1790.

The Act was amended by fifth congress, 1 STAT 627, Ch. 22, statute III, March 2, 1799. The language of the original act was retained as reflected in sections 67 and 68 of the Act.

In 1866, the Act was substantially amended. It was presented as Senate Bill 222, An Act to Prevent Smuggling. The bill was prepared at the Treasury Department. New provisions were added.

"These new provisions apply cheifly to the northern, northeastern, and northwestern frontiers, and are suggested by the relations which have sprung up in a few years past between

the British Provinces on this continent and that region of our country." Colloquy of Mr. MORRILL, Cong. Globe, 39th Cong., 1st Sess., 2563, 1866.

Section 2 of the Act to Prevent Smuggling read in pertinent part:

> "...(I)t shall be lawful for any officer of the customs... to go on board any vessel... and to inspect, search, and examine the same and any person, trunk, or envelope on board... and if it shall appear that any breach or violation of the laws of the United States has been committed... such vessel, or goods on board... is or are liable to forfeiture..." 14 STAT 178 (Emphasis Supplied.).

It was moved by Mr. HUMPHREY to amend section 2 to insert the words "when he or they shall inspect". Cong. Globe, supra, 3420. That motion was defeated. Section 2 pertained only to vessels and to goods, merchandise, and wares on board.

Section 3 of the Act provided in pertinent part:

> "That any of the officers or persons authorized by the second section of this act to board or search vessels may stop, search, and examine, any vehicle, beast, or person on which or on whom he or they shall suspect there are goods, wares, or merchandise which are subject to duty or shall have been introduced into the United States in any manner contrary to law,... and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there are goods which were imported contrary to law;... and the Secretary of the Treasury may from time to time prescribe regulations for the search of

persons and baggage, and for the employment of female inspectors for the examination and search of persons of their own sex; and all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the government, under such regulations as the Secretary of the Treasury shall from time to time prescribe..." 14 STAT 178.

Section 3 was discussed in debate on the floor of the senate Mr. HUMPHREY:

"...under the third section these men are authorized to arrest any person and examine his trunks and vehicle for the purpose of seeing whether there is any property which has been smuggled. But the officer can do this only where he has reason to believe the person or carriage has goods liable to duty. I think that is at least an amount of caution which ought to be placed in this bill when we are to put such immense powers into the hands of such men as will doubtlessly have the priviledge of exercising them." Cong. Globe, 39th Cong., 1st Secc., 2563, (1886).

Section 3 of the act retained the "reason to suspect" language. This section was in response to persons entering the country on foot, horseback, or carriage who may have concealed contraband on themselves or on their horse or in a vehicle.

It was clearly the intent of the 39th Cong., congress not to grant unlimited authority to customs officers. The "reasonable suspicion" language which originated in 1789 remained even though smuggling had become a serious problem. Cong. Globe 39th Cong., 1st Sess. 2564-71, (1886).

It is obvious from a careful reading of section 3 that both

19 U.S.C. 482 and 19 U.S.C. 1582 originated from this section. Section 3 was divided into subsections in 1871 by a commission appointed to revise the statutes of the United States. See report of the Commission, 42nd Congress, 2nd Sess., Misc., Doc. no. 3, Vol. 1, December 4, 1871. The revised and renumbered statutes were adopted by the 43rd Congress in 1873. 18 STAT, Part, 588.

Both 19 U.S.C. 482 and 19 U.S.C. 1582 originates in the same section, (3) of the same act. It is clear that that legislators contemplated that section 3 would be read as a whole.

Both 19 U.S.C. 482 and 19 U.S.C. 1582 apply in the instant case. They are not in conflict. The only instance where congress has expressly extended authority of customs officers without reasonable suspicion is when boarding ships on the open sea. United States v. Willamonte-Marquez _____U.S._____(1983). Authority to search persons crossing United States borders has always been based on reasonable suspicion.

The act of 1789 expressly provides searches to be conducted under circumstances "in which they shall have reason to suspect." First congress, Sess. 1, Chap. 5, section 23, 1789, 1 STAT 29, 43. Nowhere else in the 1789 act is there mention of a search except (1), packages could be opened in the presence of two reputable merchants, 1 STAT 29, 43 § 23 and (2), a customs officer could obtain an warrant to search a house. 1 STAT 29, 43 § 24. Suspicion was required in both of these latter situations.

It is significant that in almost two hundred years since the Act to Regulate the Collection of Duties, I STAT 29, was deemed to create the border search exception to the Fourth Amendment, the express language requiring a reasonable cause to suspect has been retained.

The Trial Court in this case applied the provisions of 19 U.S.C. § 482 to the facts and suppressed the evidence finding that there was no "reasonble cause to suspect".

The Court of Appeal for the Second Appellate District in reversing the Trial Court surprisingly relied on United States v. Ramsey, 431 U.S. 606 (1977). (See Appendix "A").

Ramsey held that a search of the incoming international mail under 19 U.S.C. § 482 required a "reasonable cause to suspect".

The California Court of Appeal in its decision completely ignored the clear provisions and expressed wording of the statute and ignored its validity. 28 U.S.C. § 1257 (1).

The following United States Supreme Court cases hold with respect to border searches that any stop or search requires probable cause, reasonable suspicion, or other discretion-limiting features.

Almeida-Sanchez v. United States
413 U.S. 266 (1973)
United States v. Brignoni-Ponce
422 U.S. 873 (1975)
United States v. Ortiz
422 U.S. 891 (1975)
United States v. Martinez-Fuerte
428 U.S. 543 (1976)
Delaware v. Prouse
440 U.S. 648 (1979)

The most recent United States Supreme Court case, United States v. Villamonte-Marquez _____U.S._____ (1983), upheld 19 U.S.C. § 1581(a) which allowed Customs Officials, without any suspicions of wrongdoing, to "board for inspection of documents" a vessel that is located in waters providing ready access to the open sea. (Emphasis Supplied.).

The Court's emphasis in Villamonte, was on factual differences between vessels located in waters offering ready access to the open sea and automobiles on principal thoroughfares in the border area. The Court also considered the historical origin of

Section 1581(a).

Other than Villamonte, which deals with a different statute, no case by the United States Supreme Court has ruled that 19 U.S.C. § 482 is not the applicable standard for searching persons and their belongings at the border based on "reasonable cause to suspect". As a matter of fact, this court in United States v. Ramsey, supra, reflects that Title 19 U.S.C. § 482 is "alive and well".

The Circuit Courts of Appeal are in conflict over the application of 19 U.S.C. § 482 and 19 U.S.C. § 1582, as noted by the following representative cases:

United States v. Chavarria (5th Cir. 1974) 493 F.2d. 935, 937 applied 19 U.S.C. Section 1582 as stated:

> "The Courts have long recognized the government's right to search and detain travelers at our international boundries on the basis of reasonble suspicion..." (Citations omitted).

United States v. Steinkoenig (5th Cir. 1973) 487 F2d. 255 required reasonable suspicion under 19 U.S.C. Section 482 in the nature of an informer's tip and surveillance.

United States v. Diemler (5th Cir 1974) 498 F2d 1070, 1072 reversed the district court because the government did not meet its burden and show the existence of "reasonable suspicion" of a customs or immigration violation.

The Fifth Circuit Court of Appeals as seen supra requires "reasonable suspicion" under both statutes. This interpretation and construction appear to be correct on the basis of the sections' legislative history. See, also, Stassi v. United States (5th Cir. 1969) 410 F2d. 946.

In Alexander v. United States (9th Cir. 1966) 362 F.2d. 379, 382 the Court in considering both statutes states that "unsupported or mere suspicion alone is sufficient to justify a search for pur-

poses of customs law enforcement." In Alexander, the suspicion was from a tip and surveillance.

In United States v. Diamond (9th Cir. 1973) 471 F.2d. 771, 773 the Court applied 19 U.S.C. § 482 and reviewed the evidence for a "founded suspicion that a violation of a customs law or laws relating to narcotic drugs was occurring."

In Klein v. United States (9th Cir. 1973) 472 F.2d. 847, 849 the Court states that a border search of a vehicle was subject to a general test of reasonableness but could be made with or without cause or on unsupported or mere suspicion alone. The court further held that mere entry alone into the United States from a foreign country was sufficient reason for a border search.

Witt v. United States (9th Cir. 1961) 287 F.2d. 389, 391, cert. denied 366 U.S. 950, 81 S. Ct. 1904, 6 L.Ed.2d. 1242, holds "mere suspicion has been held enough cause for a search at the border". It Witt there was a description of the car and information to the border guards as one possibly bearing heroin.

In United States v. Sheer (3d Cir. 1979) 600 F.2d. 6, 7, the Court applied 19 U.S.C. Section 1582 and only one implementing regulation (C.F.R. § 162.6) and held the border search valid "notwithstanding the absence of probable cause or even a quantum of individualized suspicion." 19 U.S.C. § 482 was held not to apply.

United States v. Glaziou (2n Cir. 1968) 402 F.2d. 8, Cert. den. 393, U.S. 1121, 22 L.Ed.2d 126, 89 S.Ct. 999 required "reasonable suspicion" to justify the search. In Glaziou there was a nervousness and a "bulge around Glaziou's waist."

In summary, some circuits have applied 19 U.S.C. § 1582 while others have applied 19 U.S.C. § 482. Still other circuits have cited to the dicta in Carroll v. United States, 276 U.S. 132 (1924) as controlling. The confusion is further magnified by the express holding in United States v. Ramsey, 431 U.S. 606 (1977).

It is urged that this Court should make a decision in this

area which will once and for all settle the question. The issue presented by this Appeal appears to be the only border search issue which has not been decided by the United States Supreme Court.

It is also urged that the court consider additionally the fact that in this case the Appellant was removed from the other passengers and taken to a Secondary station approximately 100 yards away, out a door and down some stairs. At the time that Appellant was removed from the other 50 or 60 passengers, there should at that time have been probable cause to conduct any search.

United States v. Place, _____ U.S. _____(1983)

Florida v. Royer, _____U.S._____(1983)

"...in short, we hold that the detention of Respondent's luggage in this case went beyond the narrow authority possessed by police to detain briefly luggage reasonable suspected to contain narcotics." (See Place supra).

Royer, supra, held that the police had exceeded the limits of an investigative stop where they asked the defendant to accompany them to a small police room and retained his ticket and drivers' license and indicated in no way that he was free to depart.

It is submitted that once there is a separation of the person under investigation from other members of the general public that such a further detention or search must be based upon consent or probable cause. See, United States v. Brignoni-Ponce, 422, U.S. 873 (1975).

CONCLUSION

The legislative history confirms the premise that the congress that enacted the Fourth Amendment never intended to allow customs officials freedom to search indiscriminately merely because a border had been crossed. To conclude otherwise is to

treat individuals today by a different standard without the same protections granted by the First Congress. The intent of the legislature is clear from an examination of the history of the two federal statutes in question. To give force to one statute while ignoring the other is to select terms from an act of congress that conveniently justify acts of government officials and to dismiss the expressed protections granted by the same act.

Other than in dicta, the United States Supreme Court decisions have supported the fact that absent a "reason to suspect", a search will not be permitted. The conflict within the Circuit Court of Appeal and the uneven application of federal law cannot be totally rerationalized.

Due to the fact that there is no United States Supreme Court case in point and the further fact that the Circuit Courts of Appeal are divided and also because 19 U.S.C. § 482 has been applied as recently as Ramsey, this court should note probable jurisdiction of this Appeal.

Respectfully Submitted,

JOHN P. KENOSIAN
A PROFESSIONAL CORPORATION
7080 Hollywood Boulevard,
Suite 307
Hollywood, California 90028

Counsel for Appellant

DATED: January 18, 1984

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Appellant, v. ROBERT CARLTON ENRIGHT and HENNING REIMER, Defendants and Respondents.	2 CRIM. NO. 43532 (Super.Ct.No. A-900448)

COURT OF APPEAL-SECOND DIST.
FILED
SEP 28 1983
CLAY ROBBINS, JR. Clerk
Deputy Clerk

APPEALS from an order of the Superior Court of Los Angeles County. Edward A. Hinz, Jr., Judge. Reversed.

Robert H. Philibosian, District Attorney (Los Angeles County), Donald J. Kaplan and George M. Palmer, Deputy District Attorneys, for Plaintiff and Appellant.

John P. Kenosian under appointment by the Court of Appeal, for Defendant and Respondent Robert Carlton Enright.

Kim H. Pearman, for Defendant and Respondent Henning Reimer.

Appendix "A"

The People appeal the order dismissing an information which charged respondents with the illegal importation of cocaine entered after the court granted respondents' motion to suppress evidence. (Health & Saf. Code, § 11352; Pen. Code, § 1538.5.) Appellant contends: "The trial court erred in suppressing the evidence. Customs officers at an international border (or its functional equivalent) may search a person and the person's effects without any cause whatsoever, solely on the basis that the person is entering the United States from a foreign country. Moreover, the evidence shows there was 'reasonable cause' to search defendants and their personal effects."

The motion to suppress was submitted upon the preliminary examination transcript. The record establishes that on December 31, 1981, respondents Robert Enright and Henning Reimer arrived at Los Angeles International Airport by means of an international flight from Lima, Peru. As they proceeded through Customs, the Treasury Enforcement Computer System (TECS) revealed that respondents were each suspected to be in possession of cocaine. An inspection of the contents of respondent Reimer's handluggage uncovered 807 grams of cocaine contained within the covers of an "extremely heavy" photograph album that smelled of fresh glue, and 1.34 grams of the substance within Enright's handluggage. The trial court

granted the motion to suppress the evidence because the computer information was insufficient to warrant the search of the luggage.

Appellant's contention that the trial court erred in granting the motion to suppress is well taken. It is settled that reasonable grounds to search a person or inspect his personal effects at an international port of entry is established solely by reason of the entry into the United States from a foreign country. (United States v. Ramsey (1977) 431 U.S. 606, 616-617; United States v. Sandler (5th Cir. 1981) 644 F.2d 1163; People v. Duncan (1974) 40 Cal.App.3d 940, 945; see, 19 U.S.C. §§ 482, 1582.)

The justification for inspection of respondents' handluggage was not dependent upon the information obtained by the customs inspectors from the Treasury Enforcement Computer System. (Cf. United States v. Gallagher (4th Cir. 1977) 557 F.2d 1041, 1043, cert. den. Gallagher v. United States (1977) 434 U.S. 870.) The reasonableness of the inspection of the contents of respondents' handluggage was established solely by the undisputed evidence that respondents had arrived in the United States from a foreign country at an established port of entry, and were subjected to a permissible, reasonable search of the luggage. (United States v. Sandler, supra, 644 F.2d at

1165-1168; cf. People v. Leyba (1981) 29 Cal.3d 591, 597.)[1/]

The order granting the motion to suppress evidence is reversed.

NOT TO BE PUBLISHED.

HANSON (Thaxton), J.

We concur:

SPENCER, P.J.

LILLIE, J.

1.

As the content of the computer entry relating to respondents' suspected narcotic activity was extraneous to the justification for a search of respondents' handluggage, the decision in People v. Ramirez (Crim. 24489, Sept. 6, 1983) ___ Cal.3d ___, ___ (Slip opn., pp. 19-21) referred to by a respondents' counsel during oral argument, is not in point.

In the Court of Appeal of the
State of California,
Second Appellate District

ROBERT CARLTON ENRIGHT, Appellant	)	
	)	
-v-	)	2 Crim. No. 43532
	)	
STATE OF CALIFORNIA, Appellee	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that ROBERT CARLTON ENRIGHT, The Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Court of Appeal of the State of California, Second Appellate District dated November 23, 1983.

This appeal is taken pursuant to 28 U.S.C. § 1257 (1).

JOHN P. KENOSIAN

JOHN P. KENOSIAN, Attorney for Appellant

Appendix "B"

(PROOF OF SERVICE BY MAIL---1013a, 2015.5 C.C.P.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen (18) years and not a party to the within entitled action; my business address is 7080 Hollywood Boulevard, Suite 307 Hollywood, California 90028.

On January 19, 1984 I served the within NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Hollywood, California addressed as follows:

Office of the District Attorney
18000 Criminal Court Building
210 West Temple Street
Los Angeles, California 90012

Office of the Attorney General
3580 Wilshire Boulevard, Room 800
Los Angeles, California 90010

Court of Appeal, Second Appellate District
3580 Wilshire Blvd., Room 301
Los Angeles, California 90010

Judge Edward A. Hinz, Jr.
Superior Court of Torrance
Attention: Department K
825 Maple Avenue
Torrance, California 90503

Solicitor General
Department of Justice
Washington, D.C. 20530

I declare (or certify), under penalty of perjury, that the foregoing is true and correct.

Executed on January 19, 1984, at Los Angeles, California

JOHN P. KENOSIAN

JOHN P. KENOSIAN

In the Supreme Court of the
State of California

ROBERT CARLTON ENRIGHT, Appellant	)	
	)	
-v-	)	No. 2 Crim #43532
	)	
STATE OF CALIFORNIA, Appellee	)	

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that ROBERT CARLTON ENRIGHT, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of California, denying a hearing in the case on November 23, 1983 and affirming the judgment of conviction entered herein on September 28, 1983 by the Court of Appeal in the State of California, Second Appellate District.

This appeal is taken pursuant to 28 U.S.C. § 1257 (1).

JOHN P. KENOSIAN

JOHN P. KENOSIAN, Attorney for
Appellant

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen (18) years and not a party to the within entitled action; my business address is 7080 Hollywood Boulevard, Suite 307, Hollywood, California 90028.

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Solicitor General
Department of Justice
Washington, D.C. 20530

I declare (or certify), under penalty of perjury, the the foregoing is ture and correct.

Executed on January 19, 1984, at Los Angeles, California.

JOHN P. KENOSIAN

JOHN P. KENOSIAN

RECEIVED
JAN 25 1984
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

NO. 83-6156

ROBERT CARLTON ENRIGHT, Appellant

v.

THE STATE OF CALIFORNIA, Appellee

MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

The Appellant, Robert Carlton Enright who is now on liberty on his own recognizance, asks leave to file the attached Appeal from the Court of Appeal for the Court Appeal of California, Second Appellate District without prepayment of costs and to proceed in Forma Pauperis pursuant to Rule 53.

The Appellant's affidavit is support of this Motion is attached hereto.

JOHN P. KENOSIAN
Counsel for Appellant
7080 Hollywood Blvd., Suite 307
Hollywood, California 90028
213-466-4525

RECEIVED
JAN 25 1984
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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October Term, 1984

NO. 83-6156

ROBERT CARLTON ENRIGHT, Appellant

v.

THE STATE OF CALIFORNIA, Appellee

AFFIDAVIT

I, Robert Carlton Enright, being first duly sworn according to law, depose and say, in support of my Motion for leave to proceed without being required to prepay costs or fees: 1. I am the Appellant in the above-entitled case. 2. Because of my poverty I am unable to pay the costs of said cause. 3. I am unable to give security for the same. 4. I believe that I am entitled to the redress I seek in said case. 5. The nature of the case is briefly stated as follows:

I was stopped and searched by customs officials at the Los Angeles International Airport witout probably cause or a reasonable suspicion that I was carrying contraband. The case against me was dismissed by the Superior Court for the County of Los Angeles on October 1, 1982 because of an illegal search and seizure.

On September 28, 1983 the Court of Appeal of the State of California, Second Appellate District reversed the dismissal of the instant case by the Superior Court of Los Angeles County and on November 28, 1983 the Supreme Court of the State of California denied a hearing in my case. The illegality of the search and seizure is

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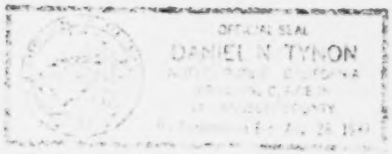
raised in this appeal.

Robert Carlton Enright
ROBERT CARLTON ENRIGHT

Duly witnessed and sworn to before me, a Notary Public, this 19th day of January, 1984.



Daniel N Tynon
NOTARY PUBLIC